DECISION ON ADMISSIBILITY AND MERITS

(delivered on 7 September 2001)

Cases nos. CH/00/4116, CH/00/4117
CH/00/4077 and CH/00/4115,

Bisera SPAHALIĆ, Mustafa SPAHALIĆ
Avdo TOSKIĆ and Adil UŠANOVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 4 September 2001 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. These cases concern the attempts of the applicants, who are displaced persons of Bosniak descent, to regain possession of their property in Brčko. Pursuant to Annex 2 to the General Framework Agreement for Peace in Bosnia and Herzegovina signed in 1995, titled Agreement on Inter-Entity Boundary Line and Related Issues, the question of control over Brčko was left open for later international arbitration. Annex 2 further stipulated that, in the meantime, and unless otherwise agreed, the area would continue to be administered as it had been at the time the General Framework Agreement was signed. Each applicant has been trying to regain property that is situated in the north-eastern part of the Brčko District that was under the control of the Republika Srpska at the time that the General Framework Agreement was signed.

2. All of the applicants, between March and May of 1999, initiated administrative proceedings before the Republika Srpska authorities to regain possession of their homes. In the case of Bisera Spahalić (CH/00/4116), Mustafa Spahalić (CH/00/4117) and Avdo Toskić (CH/00/4077) no response was ever received from the Republika Srpska authorities. On 9 September 2000 Adil Ušanović (CH/00/4115) was reinstated into his apartment by the Ministry for Refugees and Displaced Persons of the Republika Srpska. On 15 November 2000 Mustafa Spahalić was reinstated into his apartment by the Brčko District Department for Urbanism, Property Affairs and Economic Development.

3. On 5 March 1999 the Arbitral Tribunal, established under the Dayton Peace Agreement, issued its final award, establishing that Brčko shall be a "self-governing neutral district" under the sovereignty of Bosnia and Herzegovina upon the effective date to be established by the Office of the High Representative's Supervisor in Brčko (the "Supervisor"). The Statute of Brčko, which was the instrument implementing the Arbitral Award, was adopted on 8 March 2000.

4. The cases raise issues under Article 6, 8, and 13 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

5. Application no. CH/00/4077 TOSKIĆ was received on 14 February and registered on 17 February 2000, and application nos. CH/00/4115 UŠANOVIĆ, CH/00/4116 SPAHALIĆ and CH/00/4117 SPAHALIĆ were received on 17 February 2000 and registered on 18 February 2000.

6. During the April 2000 session the Plenary Chamber considered all four cases and instructed the Registry to transmit the cases for observations on admissibility and merits to Bosnia and Herzegovina and the Republika Srpska. The Chamber further instructed the Registry to request *amicus curiae* intervention by the Office of the High Representative on the status of Brčko.

7. The applications were transmitted to the Republika Srpska and Bosnia Herzegovina on 20 April 2000. The Chamber received observations from the Republika Srpska on 14 June 2000 and from Bosnia and Herzegovina on 26 June 2000. On 8 May 2000 a legal opinion, by way of an *amicus curiae* submission, regarding the appropriate respondent party in the Brčko cases was received from the Office of the High Representative. It opined that Bosnia and Herzegovina should represent the District of Brčko in cases before the Chamber.

8. The legal opinion was transmitted to the applicants and the respondent Parties for their observations in reply.

9. On 21 August 2000 the Registry received observations and claims for compensation from the applicants in cases nos. CH/00/4117 Mustafa Spahalić and CH/00/4116 Bisera Spahalić.

10. The Chamber considered these cases again during the September 2000 session. The Chamber instructed the Registry again to transmit all four cases to the Republika Srpska and Bosnia

Herzegovina for their observations on the admissibility and merits of the cases and to request specific observations regarding the appropriate respondent Party in cases arising in the Brčko District. On 25 September 2000 the Registry sent a letter to the Republika Srpska and Bosnia and Herzegovina requesting full observations on the admissibility and merits of all four cases. It was also noted that some of the facts alleged in these cases took place before the Statute of the District of Brčko came into force and that, therefore, there might be some question as to which might now be the responsible party if any violation were found.

11. The Registry received further observations on the admissibility and merits from Bosnia and Herzegovina on 24 October 2000. No response was received from the Republika Srpska. The observations were forwarded to the applicants for their comments in reply.

12. In a letter received by the Chamber on 19 December 2000 in cases nos. CH/00/4117 and CH/00/4116, Mustafa Spahalić and Bisera Spahalić, the Registry was informed that Mustafa Spahalić had regained possession of his home. However, Bisera Spahalić had not. The applicant Mustafa Spahalić maintained his compensation claim.

13. On 23 January 2001, the Registry wrote to the applicants in cases nos. CH/00/4077 and CH/00/4115, Toskić and Ušanović, inquiring as to the status of their applications.

14. On 4 April 2001 the Chamber held a public hearing on the admissibility and merits of the cases at the Dom Kulture/Community Centre in Brčko. The applicants Bisera Spahalić, Mustafa Spahalić and Adil Ušanović were present. Bisera Spahalić represented Mustafa Spahalić. The respondent Party Bosnia and Herzegovina was represented by its agent Mr. Jusuf Halilagić. The respondent Party Republika Srpska was represented by its agent Mr. Stevan Savić. Mr. Siniša Kisić the Mayor of Brčko appeared as a witness. Mr. Gerhard Sontheim, the acting Supervisor for the Office of the High Representative in Brčko along with Mr. Ilias Chatzis Head of the Legal Department appeared as *amicus curiae.*

15. The Chamber deliberated on the admissibility and merits of the applications on 5 April, 5 and 6 July and 3 and 4 September 2001 and adopted the present decision on the latter date.

III. FACTS

A. The establishment of the District of Brčko

16. Annex 2, Article V, to the General Framework Agreement established that, pending a binding arbitration, and unless otherwise agreed**,** the area of Brčko should continue to be administered as it was administered at the time of the signing of the Dayton Peace Agreement on 14 December 1995. At that time, the north-eastern part of the Brčko municipality was administered by the Republika Srpska, while the southern part was administered by the Federation. Within the Federation area, Ravne/Brčko was administered by Croats and Brka was administered by Bosniaks.

17. On 5 March 1999 the Arbitral Tribunal issued its final award, establishing the "basic plan" for the new District of Brčko. The award established that Brčko was to be a "self-governing neutral district" under the sovereignty of Bosnia and Herzegovina. Further, it concluded that "upon the effective date to be established by the Supervisor each entity shall be deemed to have delegated all of its powers of governance within the pre-war Brčko Opština to a new institution" (paragraph 9). It will be subject to Bosnia and Herzegovina control in those areas, which are the responsibility of the Bosnia and Herzegovina common institutions, as those powers are enumerated in the Constitution. In other respects, the District Government will operate on a self-governing basis (paragraph 34). Further, it established that "for the time being, Federation law and Republika Srpska law as well as governmental arrangements will continue to apply in the District as before" (paragraph 39).

18. The Statute of the Brčko District of Bosnia and Herzegovina (the "Statute") was adopted on 8 March 2000. The Supervisory Order on the Establishment of the Brčko District of Bosnia and Herzegovina (Official Gazette "OG" Brčko District no. 1/00) of that same day declared the Statute to be in force as of 8 March 2000. By virtue of the Statute the District was created.

19. On 19 September 2000 a Memorandum of Understanding was signed between the Entities. Under the agreement, the Division of Housing and Refugees, within the Department of Urbanism of the Brčko District will perform the functions previously exercised by the Department of the Republika Srpska Ministry for Refugees (OMI) in Brčko, the Municipal Returns Offices (MROs) of Brka and Ravne-Brčko and the Multi-Ethnic Housing Commission (MEHC). Under the agreement, the OMI, the MROs and the MEHC ceased to exist.

20. The Brčko District Judiciary was established on 1 April 2001.

B. The facts of the individual cases

1. Case no. CH/00/4116 Bisera SPAHALIĆ

21. The applicant is the owner of a house in Brčko in Ulica Braće Suljagića 47. The house was declared abandoned and allocated to a third person for temporary use in 1997.

22. On 5 April 1999, in accordance with the Republika Srpska Law on the Cessation of the Application of the Law on the Use of Abandoned Property, the applicant filed a request for repossession with the competent Department of the Ministry of Refugees and Displaced Persons of the Republika Srpska in Brčko.

23. The applicant did not receive a response from the Ministry. Accordingly, on 24 August 1999, the applicant lodged an appeal against the silence of the administration to the Ministry of Refugees and Displaced Persons of Republika Srpska in Banja Luka.

24. On 27 September 1999 the applicant filed a request for urgency to the same Ministry in Banja Luka pursuant to the Law on Administrative Disputes. She still did not receive a response and instituted an administrative dispute before the Supreme Court of the Republika Srpska.

25. To this day, the applicant has received no response in any of the above-mentioned proceedings.

2. Case no. CH/00/4117 Mustafa SPAHALIĆ

26. The applicant is represented by Bisera Spahalić. He owns a house in Brčko in Ulica Braće Suljagića 49. The house was declared abandoned and allocated to a third person for temporary use in 1997 and the rights of the temporary user were again confirmed by the Republika Srpska authorities in 1999.

27. On 19 May 1999, in accordance with the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, the applicant filed a request for repossession with the competent Department of the Ministry of Refugees and Displaced Persons of the Republika Srpska in Brčko.

28. The applicant did not receive a response from the above referenced Ministry. Accordingly, on 24 August 1999, he lodged an appeal against the silence of the administration to the Ministry of Refugees and Displaced Persons of Republika Srpska in Banja Luka.

29. At some point in time the applicant applied to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). On 9 September 1999, he received a decision confirming his ownership rights over his property.

30. On 27 September 1999 the applicant filed a request for urgency to the same Ministry in Banja Luka pursuant to the Law on Administrative Disputes. He still did not receive a response and instituted an administrative dispute before the Supreme Court of the Republika Srpska.

31. In a letter received by the Registry on 19 December 2000, the applicant's representative informed the Chamber that the applicant gained repossession of his home on 15 November 2000 by

a decision issued by the Brčko District, Division of Housing and Refugees. However, the home is practically uninhabitable and the applicant wishes to maintain his claim for compensation.

3. Case no. CH/00/4077 Avdo TOSKIĆ

32. The applicant is the occupancy right holder over an apartment in Brčko in Ulica Milaka Tešića 2. The apartment was declared abandoned and allocated to a third person for temporary use.

33. On 24 May 1999, in accordance with the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, the applicant filed a request for repossession with the competent Department of the Ministry of Refugees and Displaced Persons in Brčko.

34. The applicant did not receive any response from the Ministry. Accordingly, on 4 October 1999, he lodged an appeal against the silence of the administration to the Ministry of Refugees and Displaced Persons of Republika Srpska in Banja Luka.

35. On 5 November 1999 the applicant filed a request for urgency to the same Ministry in Banja Luka pursuant to the Law on Administrative Disputes. He still did not receive a response and instituted an administrative dispute before the Supreme Court of the Republika Srpska on 23 November 1999.

36. By letter dated 10 April 2001, the applicant informed the Chamber that he still had not regained possession, nor had he received any response in the above mentioned proceedings. He remains a displaced person currently living in Boće.

4. Case no. CH/00/4115 Adil UŠANOVIĆ

37. The applicant is an occupancy right holder over an apartment in Brčko in Ulica Štrosmajerova 22. The apartment was declared abandoned and allocated to a third person for temporary use.

38. On 4 March 1999, in accordance with the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, the applicant filed a request for repossession with the competent Department of the Ministry of Refugees and Displaced Persons in Brčko.

39. The applicant did not receive any response from the Ministry. Accordingly, on 27 August 1999, he lodged an appeal against the silence of the administration to the Ministry of Refugees and Displaced Persons of the Republika Srpska in Banja Luka.

40. On 1 October 1999 the applicant filed a request for urgency to the same Ministry in Banja Luka pursuant to the Law on Administrative Disputes. He still did not receive a response and instituted an administrative dispute before the Supreme Court of the Republika Srpska.

41. The applicant regained possession of his apartment on 9 September 2000 by a decision of the Ministry for Refugees and Displaced Persons of the Republika Srpska. The applicant maintains his claim for compensation.

C. Oral evidence received at the public hearing

Amicus curiae

42. The Office of the High Representative, appearing as *amicus curiae* at the public hearing before the Chamber, was represented by Mr. Gerhard Sontheim, Acting Supervisor of the Brčko District and Mr. Ilias Chatzis, Head of the Legal Department of the Office of the High Representative in Brčko. Mr. Sontheim made the following statement:

> "The position of the Supervisor is in principle ... that in accordance with Article 1 of the Brčko District Statute the district is a unique unit of local self-government under the sovereignty of Bosnia and Herzegovina. The Brčko District is not the legal successor of the Entities. As I said the Brčko District is new and unique form of local self-government and even though some of the authorities of the Entities

> have been delegated to the District, not all of them have and not all of them have at the same time. The District is the legal successor of the former Municipalities operating in the area of the District and that is in accordance with Article 71 of the Brčko district Statute. So, therefore, our position is that Bosnia and Herzegovina is the respondent Party for all cases originating from the Brčko District committed before or after 8 March 2000."

43. With respect to the competence for judicial proceedings, Mr. Chatzis explained that up until the Brčko judiciary was established in April 2001 the Entity judiciaries continued to operate in the area of the District. There was the Brčko Basic Court in Brčko town for the Republika Srpska part and the Federation Court in Brka. With respect to cases pending before the Republika Srpska Supreme Court appealing against the silence of administration, he stated that those cases would remain within the jurisdiction of the Republika Srpska Supreme Court.

44. With respect to the competence for solving housing issues, Mr. Sontheim explained that when the District was created the Municipal Housing Office in each Municipality continued operating. These Municipal Housing Offices were under the auspices of each Entity. This was changed by an agreement with the Entities on 19 September 2000 in a Memorandum of Understanding that integrated the former Municipal Housing Offices into one organisation that then became a part of the District Government. It was called the Division for Returns. In the words of Mr. Sontheim, "So from on or before 19 September 2000 the responsibility was with the former Municipal Housing Offices."

45. Mr. Sontheim further explained that prior to 19 September 2000 there existed the Multi-Ethnic Housing Commission which was a body which was ethnically staffed to oversee and supervise the work of the Municipal Housing Offices and prepare for the transition into the current structure. Accordingly, he stated that there was no doubt that the respective Municipal Housing Authorities were under the exclusive jurisdiction of the respective Entity.

46. In response to the direct question of when the responsibility of the Republika Srpska ended and that of the District began Mr. Sontheim stated as follows:

> "The decision by the International Arbitration Tribunal on 5 March 1999 was to establish a District and then a Supervisor was tasked, accordingly, to establish it. The formal establishment of the District was on 8 March 2000. The establishment of the District is a process, which is still ongoing. And in many areas Entity legislation continues such as in tax laws for instance and others. So, again in regard to the question in these cases I think that dates where the District took over the responsibility in housing issues was 19 September 2000."

Mr. Chatzis went on to explain that, with regard to returns and the implementation of the property laws, proceedings at both the Municipal and Entity level were to be transferred as of 19 September 2000.

47. Finally, Mr. Sontheim explained that with respect to the processing of the claims for repossession that the District of Brčko inherited on 19 September 2000 a policy of handling these cases in chronological order had been adopted.

Witness

48. Siniša Kisić, the Mayor of the District of Brčko since 8 March 2000, stated that until 19 September 2000 the Entities were *de facto* responsible for the return of refugees and displaced persons. He further explained that persons who return to their homes and find them damaged are entitled to bring either a criminal or civil procedure.

49. Mr. Kisić further stated that the District of Brčko would implement any decisions issued by the Chamber against the State of Bosnia and Herzegovina. Further, he stated, this is possible because "the State is responsible for the District of Brčko since it is a part of the Entities as well as of the State."

50. Mr. Kisić confirmed that the District of Brčko was processing requests for repossession in chronological order.

IV. Relevant legislation

1. Agreement on Inter-Entity Boundary Line and Related Issues

51. The Agreement on the Inter-Entity Boundary Line and Related issues is contained in Annex 2 to the General Framework Agreement. Article V is entitled "Arbitration for the Brčko Area". In paragraph 1 of Article V, it is stated that "the parties agree to binding arbitration of the disputed portion of the Inter-Entity Boundary Line in the Brčko area. .. "

52. Paragraph 2 of Article V reads as follows:

> "No later than six months after the entry into force of this Agreement, the Federation shall appoint one arbitrator, and the Republika Srpska shall appoint one arbitrator. A third arbitrator shall be selected by agreement of the Parties' appointees within thirty days thereafter. If they do not agree, the third arbitrator shall be appointed by the President of the International Court of Justice. The third arbitrator shall serve as presiding officer of the arbitral tribunal."

53. Paragraph 4 of Article V states that "unless otherwise agreed, the area indicated in paragraph 1 above shall continue to be administered as currently."

2. The Constitution of Bosnia and Herzegovina

54. The Constitution of Bosnia and Herzegovina is contained in Annex 4 to the General Framework Agreement. Article III of the Constitution is entitled "Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities." Paragraph 1 of Article III, entitled "Responsibilities of the Institutions of Bosnia and Herzegovina" reads as follows:

> "The following matters are the responsibility of the Institutions of Bosnia and Herzegovina"
>
> (a) Foreign policy.
> (b) Foreign trade policy.
> (c) Customs policy.
> (d) Monetary policy (…)
> (e) Finances of the institutions and for the international obligations of Bosnia and Herzegovina.
> (f) Immigration, refugee, and asylum policy and regulation.
> (g) International and Inter-Entity criminal law enforcement, including relations with Interpol.
> (h) Establishment and operation of common and international communications facilities.
> (i) Regulation of Inter-Entity transportation.
> (j) Air traffic control.

55. In paragraph 3 of Article III, it is stated that "…(a)ll governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities."

56. Paragraph 5(a) of Article III, entitled "Additional Responsibilities," reads as follows:

> "Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities. "

57. Article II of the Constitution is entitled "Human Rights and Fundamental Freedoms". Paragraph 1 is entitled "Human Rights". It provides as follows:

"Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms. . ."

58. Paragraph 4 is entitled "Non-Discrimination". It provides as follows:

> "The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

3. The Statute of the Brčko District of Bosnia and Herzegovina (OG Brčko District no. 1/00)

59. The Statute of the Brčko District of Bosnia and Herzegovina was passed on 7 December 1999 and came into force on 8 March 2000. The relevant parts of the Statute read as follows:

60. The Preamble states:

> "With a view to contributing to the permanent and just peace in Bosnia and Herzegovina, respecting the national, religious and cultural identity of all people and the right of citizens to participate in the conduct of public affairs, on the basis of the General Framework Agreement for Peace, the Final Award of the Arbitration Tribunal for the Dispute over the Inter-Entity Boundary Line in Brčko Area, and the Constitution of Bosnia and Herzegovina, the following Statute of the Brčko District of Bosnia and Herzegovina is passed:"

61. *Article 1: Fundamental Principles*

1. The Brčko District (hereinafter "the District") is a single administrative unit of local self-government existing under the sovereignty of Bosnia and Herzegovina.

4. The Constitution of Bosnia and Herzegovina, as well as relevant laws and decisions of the institutions of Bosnia and Herzegovina, are directly applicable throughout the territory of the District. The laws and decisions of all District authorities must be in conformity with the relevant laws and decisions of the institutions of Bosnia and Herzegovina.

62. *Article 6: Legal Personality*

1. The District is a legal person and has such legal capacity . . . to charge and be charged in court.

63. *Article 9: Functions and Powers of the Brčko District*

This article simply lists the District's powers, including no. 13, housing.

64. *Article 62: District Courts*

1. The District shall have an independent Judiciary consisting of the Basic Court and Appellate Court.

2. The Courts shall render justice impartially in accordance with the Constitution and laws of Bosnia Herzegovina, this Statute and District Laws.

65. *Article 71: Legal Succession*

2. The Brčko District of Bosnia and Herzegovina is the legal successor to the Republika Srpska Brčko Municipality as well as to the administrative arrangements of Brka and Ravne-Brčko.

66. *Article 72: Judicial and Administrative Proceedings*

1. All proceedings in which a final decision has not been reached in courts functioning within the territory of the District at the time this Statute enters into force shall be completed in accordance with Entity Laws. All decision which take effect at the time this Statute enters into force or which shall take final effect thereafter, shall be enforced by the District Judiciary.

2. All administrative proceedings pending at the time this Statute enters into force shall be referred to the District Government.

4. Laws in force in the Republika Srpska

(a) The Law on the Cessation of the Application of the Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska nos. 38/98, 41/98, 12/99, 31/99 and 38/99 – hereinafter "OG RS")

67. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998, as amended, establishes a detailed framework for persons to regain possession of property of which they have lost possession.

68. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991, or the date of its becoming abandoned. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

69. The responsible body of the Ministry for Refugees and Displaced Persons (i.e. the local Commission for the Accommodation of Refugees and Administration of Abandoned Property) shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the law to be provided with alternative temporary accommodation. If it determines that this is the case, the Commission shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned. Any failure of the responsible authority to provide alternative accommodation for a temporary user cannot delay the return of the owner, possessor or user of such property (Article 5-7).

70. Article 8 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Such claims may be filed with the Commission. This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

71. Article 9 states that the Commission shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

72. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Proceedings (see paragraphs 75-79 below) and treated as an expedited procedure.

73. Article 12 requires that the decision of the Commission be delivered to the current occupants of the property concerned. An appeal may be lodged against a decision within fifteen days of its receipt. However, the lodging of an appeal does not suspend the execution of the decision.

74. Article 29 requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 - 11 of the law. This instruction was published in OG RS no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

(b) The Law on General Administrative Proceedings (Official Gazette Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" 47/86)

75. The Law on General Administrative Proceedings was taken over as a law of the Republika Srpska. It establishes a detailed regime for the conduct of administrative proceedings. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on General Administrative Proceedings. In all other cases, the Law on General Administrative Proceedings applies.

76. Article 5 of the law states that organs conducting administrative proceedings shall act in such a manner as to enable the parties to the proceedings to realise their rights in the most efficient way possible, having regard both to the public interest and to the interests of others affected. Article 8 sets out the general principle that before making a decision, the deciding organ must give the parties the opportunity to express their opinion on all relevant facts and circumstances. According to Article 10, the deciding organ is to act and decide upon the matter independently.

77. The procedure envisaged by the law may be briefly summarised as follows. Once an organ is seized of a matter, it shall conduct that procedure in accordance with the law. The deciding organ may receive evidence both by written submission and at an oral hearing. Chapter VI of the law allows for the issuance of deadlines at various stages of the procedure, which are to be adhered to by the person or persons subject to them, in order to ensure that the proceedings are conducted expeditiously.

78. In accordance with Article 135 of the law, all facts necessary for the taking of a decision must be obtained by the deciding organ prior to the taking of such a decision. Article 149 allows for the holding of hearings, if it is desirable for the better resolution of the issue. In certain defined cases (e.g. where expert evidence is to be taken), a hearing must be held.

79. Under Article 202 of the law, the deciding organ shall issue its decision on the basis of the facts ascertained in the proceedings before it. Articles 206-214 of the law set out the requirements for the form and content of rulings.

80. The law also provides for, e.g., appeals against decisions and enforcement of decisions.

(c) The Law on Administrative Disputes (OG RS no. 12/94)

81. Article 1 of the Law on Administrative Disputes provides that the court shall decide in administrative disputes on the lawfulness of administrative acts concerning rights and obligations of citizens and legal persons.

82. Article 8 provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time limit, whether the appeal to it was against a decision or against the first instance organ's silence. Article 25 (paragraph 3) provides that if the first instance organ does not render a decision within 30 days the applicant may appeal to the second instance organ against the silence of the first instance organ. Paragraph 1 provides that the second instance organ should issue a decision within 30 days. If it does not the party may submit a request for urgency to the second instance organ and the second instance organ has 7 days to issue a decision. If there is no decision within 7 days the applicant may initiate an administrative dispute before the Supreme Court.

V. ALLEGED AND APPARENT VIOLATIONS OF HUMAN RIGHTS

83. The applicants all allege violations of Article 8 of the European Convention on Human Rights and Article 1 on Protocol No. 1 to the Convention. In addition, all of the applicants allege that relevant legal provisions have been violated by the failure of the Republika Srpska authorities to take a decision in their cases. This appears to raise issues under Articles 6 and 13 of the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

84. In their submissions of 26 June 2000, the agents of Bosnia and Herzegovina informed the Chamber that they forwarded these applications to the Deputy High Representative for Bosnia and Herzegovina, Supervisor Brčko, Mr. Robert Farrand. They state that they transmitted the applications due to the unique status of Brčko. They pointed out that the Decision of the High Representative established the Brčko District of Bosnia and Herzegovina on 8 March 2000, which was published in the Official Gazette of Bosnia and Herzegovina on 6 April 2000. Additionally, they state that the transitional government in the newly created District had not been established yet.

85. The respondent Party states that it received no response and retransmitted the applications to the newly appointed Supervisor for Brčko, Gary Mathews, on 6 June 2000. They still received no response and informed the Supervisor that Bosnia and Herzegovina had an obligation to co-operate with the Chamber.

86. With respect to the merits of the case, the respondent Party points out that the applicants claimed violations of Articles 8 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. They further state that according to the case-law of the Chamber, a permanent occupancy right constituted a possession for the purposes of Article 8 and Article 1 of Protocol No. 1. Further, they state that according to Article 1 of Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina all refugees and displaced persons have the right to return freely to their homes.

87. In its observations of 24 October 2000, the respondent Party states that they had "presented their stand on admissibility and merits in their previous observations." With respect to the issue of which party was responsible for possible violations of human rights, if any were established, they stated: "Pursuant to Article 1 of the District Statute, the District is a unique administrative unit with local self-management under sovereignty of Bosnia and Herzegovina. Therefore, Bosnia and Herzegovina is the responsible authority (in all cases in which the decision is issued on its responsibility and obligation), for all cases submitted from the Brčko District. Bosnia and Herzegovina will carry out all of the Chamber's decisions from the territory of the Brčko District." During the public hearing, the agent for Bosnia and Herzegovina clarified the State's position that it was only responsible for alleged violations of human rights in the District of Brčko from the date when the District of Brčko was established, namely 8 March 2000.

88. However, Bosnia and Herzegovina states that the Republika Srpska should be bound for any payment of compensation. It reasons that the parties that made the Agreement on Human Rights according to Annex 6 of the Agreement are the Federation, Bosnia and Herzegovina and the Republika Srpska. All events that happened in these cases, happened before the District of Brčko came into being.

89. Furthermore, Bosnia and Herzegovina argues that the evidence in these cases demonstrated that the Republika Srpska Ministry was handling these cases in one way or another. As an illustration of this point, the respondent Party points out that in case No. CH/00/4116, Bisera Spahalić, the documents in the file indicate that the Ministry of the Republika Srpska allocated her apartment to a third party in February 1999. This was done in spite of the fact that the applicant had applied to the Ministry and they were aware of her claim to regain possession of her home.

90. Accordingly, Bosnia and Herzegovina states that, "due to the work of its bodies the Republika Srpska should bear the compensation expenses, and the competent bodies of Bosnia and Herzegovina, that is the Brčko District, will enforce in other part all of the Chamber's decisions with competent bodies performing now that kind of affairs in the Brčko District."

91. Finally, with respect to the merits Bosnia and Herzegovina maintains that refugees and displaced persons have the right to return to their homes in accordance with Article 1 of Annex 7 of the Dayton Peace Agreement.

92. During the public hearing Mr. Halilagić, as agent for Bosnia and Herzegovina, argued that the State could not be held responsible for violations of human rights concerning the proceedings initiated by the applicants before the administrative bodies and courts of Republika Srpska prior to the establishment of the Brčko judiciary. However, Bosnia and Herzegovina would take over the responsibility for eventual non-implementation of decisions and non-actions upon requests after the establishment of the Judiciary.

93. The agent conceded that in the Constitution of Bosnia and Herzegovina there is no competence of the State in judicial or housing matters and that such competencies lie within the purview of the District of Brčko pursuant to Article 9 of the Statute. Nonetheless, he stated that, through the competent organs of the Brčko District, Bosnia and Herzegovina would implement decisions of the Human Rights Chamber.

94. The agent further explained that Bosnia and Herzegovina would eventually be responsible for implementation of the European Convention on Human Rights throughout Bosnia and Herzegovina.

95. The agent further clarified the stated position in the observations regarding compensation. Mr. Halilagić explained that prior to the formation of the Brčko judiciary the applicants initiated proceedings before the competent administrative bodies of Brčko as they existed at that time, and therefore in Republika Srpska, as this was the territory of the Republika Srpska. These proceedings had not been concluded and it followed that the responsibility for compensation should be borne by the Entity. Further, he argued that Article 72 of the Statute supported this position as it requires all legal proceedings brought before the courts in the territory of the District, that had not been concluded when the Statute enters into force, to be finalised in accordance with the laws of the Entities. Accordingly, these cases should be concluded before the courts of the Entities.

B. The Republika Srpska

96. The observations of the agent of the Republika Srpska were received on 14 June 2000. With respect to admissibility, the Republika Srpska argued that it did not have standing to be sued and therefore, could not be the respondent Party in these cases. In support of this argument, it stated that according to the Dayton Peace Agreement the final decisions of the Arbitral Tribunal on the dispute relating to the Inter-Entity Boundary Line in the Area of Brčko and the Constitution of Bosnia and Herzegovina, the Supervisor for Brčko declared the Statute of Brčko District on 8 March 2000. According to Article 72 paragraph 2 of the Statute all administrative procedures including requests of applicants for repossession of property should be decided in accordance with the law on general procedure, which was not yet finalised, and should be transmitted to the Government of the District.

97. The Republika Srpska conceded that "the applicants had submitted their request for repossession of their property to the competent Department of Ministry for Refugees and Displaced Persons in Brčko, and that until the date of entry into force of the Statute the administrative procedures were not settled." Accordingly, it went on to state that "the competent organ for procedure in the cases of the applicants is the District Government which is under the sovereignty of Bosnia and Herzegovina."

98. The Republika Srpska argued that the Chamber should declare the applications inadmissible with respect to the Republika Srpska.

99. During the public hearing, Mr. Savić, the agent of the Republika Srpska, argued, for the first time, that as of the final arbitral award of 5 March 1999 the Republika Srpska authorities had no competence in court proceedings emanating from the District of Brčko. He based this argument on paragraph 11 of the Arbitral Award which, he alleges, states that the Entities shall not have competencies inside the boundaries of the District where the District Government shall govern. Accordingly, proceedings started by the applicants before the bodies of Republika Srpska were not solved. Further, Republika Srpska interprets Article 72 of the Statute to say that all cases currently pending should be finalised by the District of Brčko judiciary.

100. With respect to compensation, the agent of the Republika Srpska stated at the public hearing again that Bosnia and Herzegovina is responsible for any violation that may be found. However, if the Chamber were to consider the case against Republika Srpska the compensation claims had not been properly submitted by the applicants. Further, the applications should be struck out as they have been completely or partially resolved.

C. The Applicants

CH/00/4116 Bisera Spahalić and CH/00/4117 Mustafa Spahalić

101. On 21 August 2000, these applicants responded, by way of a letter written by Bisera Spahalić, to the respondent parties' observations and made requests for compensation. They stated that they were not lawyers and could not interpret the laws but understood that neither party had accepted any responsibility for the situation in which they find themselves.

102. Bisera Spahalić stated that she was deported from the Federal Republic of Germany in 1998 with the explanation that the Government of the Federal Republic has no obligation to the applicant because the situation in her country had improved. Since that time, she has found herself in "a very delicate situation" since coming to Brčko. She has not been able to solve "even one existential need", *inter alia*, housing, job, retirement, and health protection.

103. With respect to compensation she states that in connection with moral damages unfortunately nobody can compensate her, and therefore she only requests compensation for material costs in the amount of 12.000 Convertible Marks (*Konvertibilnih Maraka*, "KM").

104. On 19 December 2000, Bisera Spahalić informed the Registry that Mustafa Spahalić (CH/00/4117) regained possession of his home. However, the home was in terrible condition and the applicant maintained his compensation claim.

CH/00/4077 Avdo Toskić

105. By letter dated 10 April 2001, the applicant informed the Chamber that he had not repossessed his apartment. He maintained his claims.

CH/00/4115 Adil Ušanović

106. During the public hearing Mr. Ušanović explained that though he has returned into his apartment, it was destroyed. He asks for compensation particularly in light of the fact that the temporary user had repossessed his own apartment in June 2000 and that the applicant was nevertheless unable to repossess his apartment until September 2000.

VII. OPINION OF THE CHAMBER

A. Admissibility

107. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

1. Bosnia and Herzegovina

108. Bosnia and Herzegovina objects to the admissibility of the applications as directed against it in relation to events which occurred prior to the creation of the District of Brčko by the Statute which came into force on 8 March 2000. Bosnia and Herzegovina argues that it cannot be held responsible for any alleged violations of human rights prior to this date because up until that point Republika Srpska was formally and practically responsible in the area of housing matters and the judiciary.

109. The Chamber notes that the District of Brčko was formally created on 8 March 2000. However, as the Supervisor of the District explained, the actual transfer of competencies from the Entities to the District of Brčko has been a gradual process. Different responsibilities for governance have been transferred at different times (see paragraph 46 above). In relation to the matters raised in these applications, the Chamber notes that issues concerning housing matters in Brčko were handled by the Republika Srpska Ministry for Refugees (OMI) up until the Memorandum of Understanding was signed by the parties on 19 September 2000. At that point the Division of Housing and Refugees within the Brčko District Department for Urbanism, Property Affairs and Economic Development took over the functions previously exercised by the Entities.

110. Accordingly, the Chamber concludes that Bosnia and Herzegovina did not have *de facto* authority, and thus has no responsibility, for any alleged violations of human rights concerning Article 8 of the Convention or Article 1 of Protocol No. 1 to Convention prior to 19 September 2000. The applications in so far as they allege violations concerning the right to property are, therefore, inadmissible as directed against Bosnia and Herzegovina for the period prior to 19 September 2000.

111. With respect to the allegations that the right of access to court has been violated, Bosnia and Herzegovina objects to the admissibility of these allegations as directed against it in relation to events which occurred prior to the formation of the District of Brčko Judiciary on 1 April 2001. The agent of Bosnia and Herzegovina elaborated on this point during the public hearing. He explained that the applicants had initiated proceedings before the competent administrative bodies of Brčko as they existed at the time, namely the organs of Republika Srpska. When they received no response they filed complaints in the Republika Srpska Supreme Court against the silence of administration. These cases are still pending and according to Article 72 of the Statute, in the opinion of Bosnia and Herzegovina, they should be concluded by the Republika Srpska. However, Bosnia and Herzegovina will take over responsibility for the eventual non-implementation of decisions and non-actions upon requests after the establishment of the Brčko District Judiciary.

112. Prior to the creation of the Brčko District Judiciary all of the applicants initiated proceedings before the relevant authorities of the Republika Srpska. To the extent that the applicants complain about the fact that these authorities have not heard their claims within a reasonable time, the Chamber finds that Bosnia and Herzegovina cannot be held responsible for the impugned acts prior to the establishment of the Brčko District Judiciary.

113. Accordingly, the Chamber finds the allegations concerning violations of Article 6 inadmissible in relation to Bosnia and Herzegovina prior to 1 April 2001.

114. No other ground for declaring these cases inadmissible has been put forward or is apparent. The Chamber therefore declares the applications admissible in so far as they are directed against Bosnia and Herzegovina in respect of allegations arising under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention after the signing of the Memorandum of Understanding on 19 September 2000 and concerning allegations arising under Articles 6 and 13 of the Convention after the creation of the District of Brčko Judiciary on 1 April 2001. The Chamber rejects the applications as being inadmissible in so far as they are directed against Bosnia and Herzegovina in relation to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention prior to 19 September 2000 and in relation to Articles 6 and 13 of the Convention prior to 1 April 2001.

2. Republika Srpska

115. The Republika Srpska contests the admissibility of the applications on the grounds that the applications do not raise any issues that are within its responsibility. The agent stated that as of 5 March 1999, when the Final Arbitral Award concerning Brčko was delivered, the Republika Srpska no longer had competence concerning the matters complained of. Further, as to the period prior to 5 March 1999 the agent contends that until the Statute entered into force "the administrative procedures were not settled."

116. The Chamber notes however, that according to paragraph 4 of Article V of Annex 2 to the General Framework Agreement the north-eastern part of Brčko continued to be administered by the Republika Srpska. Further, the Final Arbitral Award to which the agent refers was clearly a plan for the

future establishment of the District of Brčko. The Award did not, in fact, create the District. Rather, it set out the arrangement under which the Entities were to delegate its powers to a new institution at a date in the future to be established by the Supervisor.

117. Additionally, the Chamber notes that the administrative bodies and the courts never issued any decision stating that they were not the competent authority. Further, the Republika Srpska was, in fact, exercising control in Brčko over these matters as is evidenced by the issuance of a decision by the Republika Srpksa Ministry for Refugees and Displaced Persons to Adil Ušanović on 11 September 2000.

118. For the above reasons, the Chamber rejects the Republika Srpska's argument that it can not be held responsible for the impugned acts in question.

119. No other ground for declaring these cases inadmissible has been put forward or is apparent. The Chamber therefore declares the applications admissible in so far as they are directed against the Republika Srpska in respect of allegations arising under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention prior to the signing of the Memorandum of Understanding on 19 September 2000, and concerning allegations arising under Articles 6 and 13 of the Convention. The Chamber rejects the applications as being inadmissible in so far as they are directed against the Republika Srpska in relation to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention after 19 September 2000.

B. MERITS

120. Under Article XI of the Agreement the Chamber must address the question whether the facts established above disclose a breach by the respondent Parties of their obligations under the Agreement.

1. Article 8 of the Convention

121. The applicants allege violations of their right to respect for their homes, as protected by Article 8 of the Convention. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

122. The Chamber will consider the cases primarily under this provision, as they mainly concern the inability of the applicants to return to their respective homes.

123. The Chamber notes that the applicants lived in their apartments or houses until the circumstances of the war forced them to leave. The Chamber has previously held that persons seeking to regain possession of properties they lost possession of during the war retain sufficient links with those properties for them to be considered their "home" within the meaning of Article 8 of the Convention (see, e.g. *Kevešević v. the Federation,* decision on admissibility and merits delivered on 10 September 1998, Decisions and Reports 1998, paragraph 42). The Chamber therefore considers that the apartments or houses are the applicants' "homes" for this purpose.

124. Irrespective of whether or not the respondent Parties are responsible for the events leading up to the loss by the applicants of possession of their homes, it is clear that any actions in this regard would be outside the competence of the Chamber *ratione temporis*. (see, e.g., case no. CH/99/1961, *Zornić,* decision on admissibility and merits delivered on 8 February 2001).

(a) Republika Srpska

125. The Chamber will first consider the responsibility of the Republika Srpska under this provision.

126. As the Chamber has already established (see paragraphs 116-117 above), the Republika Srpska was legally and practically responsible for handling housing issues until 19 September 2000. The Chamber notes that all of the applicants had to leave their respective homes due to the war hostility. All of the properties were then occupied by third persons. As noted above (see paragraphs 21-41 above) all of the applicants initiated administrative proceedings seeking to regain possession of their homes before the relevant Republika Srpska authorities in 1999. However, apart from the proceeding brought by Adil Ušanović, these proceedings were unsuccessful and the applicants had not regained possession up to 19 September 2000, when responsibility for housing matters was taken over by the District of Brčko authorities. The Chamber accordingly finds that the applicants were unable to regain possession of their homes due to the failure of the authorities of the Republika Srpska to deal effectively, if at all, with their applications in this regard. Therefore, the Republika Srpska is responsible for an interference with the rights of the applicants to respect for their homes.

127. The Chamber must therefore examine whether this interference is justified in accordance with paragraph 2 of Article 8 of the Convention. For an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, it must be "in accordance with the law", "serve a legitimate aim" and be "necessary in a democratic society" in order to further that aim.

128. The Chamber notes that, in accordance with the pertinent laws in force in the Republika Srpska and therefore in the north-eastern part of Brčko, the relevant authority was required to issue a decision on a request for repossession within 30 days of its receipt (see paragraph 69 above). The applicants filed their requests between March and May of 1999. No decision was ever received. All of the applicants lodged appeals against the silence of administration to the Ministry of Refugees and Displaced Persons of Republika Srpska in Banja Luka. No response was ever received. All of the applicants instituted administrative disputes before the Supreme Court of the Republika Srpska. No decision was ever received.

129. The Republika Srpska states that the initial reason for the delay is that from the signing of the Dayton Peace Agreement up until the Statute of Brčko was adopted "the administrative procedures were not settled". However, the Chamber considers that based upon a reading of Annex II of the Dayton Peace Agreement, the Arbitral Award of 5 March 1999, and the testimony of the witness and *amicus curiae* at the public hearing, this argument must be rejected. It has become abundantly clear that Republika Srpska laws applied in these cases. The Republika Srpska was both legally and factually responsible for housing matters in Brčko. Further, to the extent that the Republika Srpska considered that it was not competent to deal with housing matters in Brčko, then, at the very least, it was obligated to render decisions informing the applicants of this position. Simply allowing the requests to languish has caused an interference with the applicants' right to respect for their homes. Finally, as noted above (see paragraph 41 above), the Republika Srpska has, in fact, rendered decisions in requests for repossession. It cannot now be heard to argue that it was not competent.

130. Accordingly, the Republika Srpska has not put forward a legitimate reason for this delay. Additionally, there is an ongoing violation of the applicants' right to respect for their homes within the meaning of Article 8 paragraph 1, in so far as the procedure for examining their repossession claims have not been "in accordance with the law". The Chamber notes that Adil Ušanović (CH/00/4115) regained possession of his apartment. However, he only regained possession in September of 2000 after pursuing his claim for almost 18 months.

131. Consequently, there has been a violation by the Republika Srpska of the right of all of the applicants to respect for their homes as guaranteed by Article 8 of the Convention up until 19 September 2000 when the responsibility for housing matters was transferred from the Republika Srpska to the District of Brčko.

(b) Bosnia and Herzegovina

132. Bosnia and Herzegovina generally has no competence *stricto sensu* in relation to the issue of allowing persons who lost possession of their homes during the war to regain possession of those homes. This issue within the District of Brčko was within the competence of the Entities up until 19 September 2000, and those bodies have established legislative and practical structures to deal with this difficult and crucial task. The question arises whether Bosnia and Herzegovina bears any responsibility for the alleged failures of the District of Brčko to comply with its obligations to secure to the applicants the rights they are guaranteed under the European Convention on Human Rights, i.e. in the present cases the right to respect for home, after 19 September 2000.

133. The Chamber notes the clearly defined scope of responsibilities of Bosnia and Herzegovina as set out in the Annex 4 Constitution (see paragraph 54 above). These powers do not include the matters raised in the applications. However, the Chamber further notes that, pursuant to Article III(5)(a) of the Constitution, Bosnia and Herzegovina is empowered to assume such greater responsibility as is agreed to by the parties and is necessary to preserve the sovereignty and territorial integrity of Bosnia and Herzegovina. Paragraph 60 of the Final Arbitral Award stated that the issue of "Brčko" has had "the potential to ignite efforts to destroy Bosnia and Herzegovina through secession or renewed hostilities." It was therefore deemed appropriate and necessary by the arbitrators, under these circumstances, to invoke Article III(5)(a).

134. The Chamber notes further that it has jurisdiction over the entire territory of Bosnia and Herzegovina. Only the Entities and the State are signatories to the Agreement and therefore are the only respondent Parties before the Chamber. Given the fact that the District of Brčko does not fall under the jurisdiction of either Entity, but rather according to the Statute of Brčko, is under the direct sovereignty of the State, it follows that Bosnia and Herzegovina is the respondent Party before the Chamber concerning alleged violations of human rights in the District of Brčko. In addition, the Chamber notes that Bosnia and Herzegovina has explicitly accepted the responsibility of representing the District before the Human Rights Chamber and responsibility for the protection of human rights throughout the territory of the District in that it will be responsible for enforcing any decisions in which the Chamber may find a violation in the District of Brčko. Such action comes within the scope of Article III(5)(a) of the Constitution.

135. Accepting that Bosnia and Herzegovina can be responsible for the impugned acts complained of in so far as they have continued after 19 September 2000, the Chamber must now establish whether there has been an interference with the applicants' right to respect for their homes. As stated above, to find a violation under this Article it must be determined whether there has been an interference by a public authority with the applicants' right to respect for their respective homes. If an interference is established, it must then be determined whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention. For that to be the case, the interference must be "in accordance with the law", serve a "legitimate aim" and be "necessary in a democratic society" in order to further that aim.

136. The Chamber notes that all of the applicants had to leave their homes due to the war hostilities. All of the properties were then occupied by third persons. All of the applicants have been trying to regain possession of their homes since 1999. Only two applicants have managed, recently, to regain possession. Even in those cases the applicants allege that their homes have been rendered uninhabitable by the temporary users.

137. In case no. CH/00/4115 Mr. Ušanović regained possession of his apartment by a decision of the Ministry for Refugees and Displaced Persons of the Republika Sprska on 9 September 2000. As such, the interference with his right to home ceased prior to the point in time when Bosnia and Herzegovina assumed direct responsibility for the protection of human rights of individuals in the District of Brčko. The Chamber therefore finds that there has not been an "interference" with Mr. Ušanović's right to his home that can be attributed to Bosnia and Herzegovina.

138. With respect to the other applicants the Chamber notes that only one of them, Mustafa Spahalić (CH/00/4117), regained possession of his home on 15 November 2000, by virtue of a decision taken, expeditiously, by the Brčko District, Division of Housing and Refugees. The Chamber

therefore finds that there has not been an "interference" with Mr. Spahalić's right to home that can be attributed to Bosnia and Herzegovina**.** The Chamber notes that the remaining applicants' inability to regain possession of their homes constitutes an ongoing violation of their right to respect for their homes. With respect to these ongoing interferences Bosnia and Herzegovina states that there is a backlog of cases. However, this does not exonerate Bosnia and Herzegovina of its responsibility, in accordance with the relevant Entity laws, which continued in force, to reinstate the applicants into their homes within a certain prescribed time. Accordingly, it is clear that Bosnia and Herzegovina has failed to resolve these applicants' repossession claims within the time limits prescribed by law. Though the Chamber is aware of the stated justification, namely that there are many cases to deal with in the District of Brčko, this cannot excuse Bosnia and Herzegovina from fulfilling its obligation to protect the applicants' right to their homes.

139. In light of the above, the Chamber concludes that with respect to the cases of Bisera Spahalić (CH/00/4116) and Avdo Toskić (CH/00/4077) there has been a violation by Bosnia and Herzegovina of the right of the applicants to respect for their homes as guaranteed by Article 8 of the Convention since 19 September 2000.

2. Article 1 of Protocol No. 1 to the Convention

140. The applicants complain that their right to the peaceful enjoyment of their possessions have been violated as a result of their inability to regain possession of their property. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws a it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions of penalties."

141. The Chamber notes that Mr. Toskić (CH/00/4077) and Mr. Ušanović (CH/00/4115) hold occupancy rights over their apartments. The other two applicants are owners of their homes. In this regard, the Chamber has already found that an occupancy right can indeed be regarded as a "possession", it being a valuable asset giving the holder the right, subject to the conditions prescribed by the law, to occupy an apartment indefinitely (see case no. CH/96/28 *M.J. v. the Republika Srpska*, decision on admissibility and merits decision of October 1998, Decisions and Reports 1998, paragraph 32). Accordingly, these applicants' occupancy rights over their respective apartments constitutes a "possession" for the purpose of Article 1 of Protocol No. 1 to the Convention.

142. Article 1 of Protocol No. 1 contains three rules. The first, which is set out in the first sentence, is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions set out in law. The third rule deals with control of use of property and subjects this to the requirement of general interest and domestic law (see, among other authorities, case no. CH/96/29, *Islamic Community v. Republika Srpska*, decision on admissibility and merits of 11 June 1999, Decisions January-July 1999).

143. The Chamber considers that the actions or lack thereof of the Republika Srpska up to 19 September 2000 and Bosnia and Herzegovina thereafter**,** in the cases of Bisera Spahalić (CH/00/4116) and Avdo Toskić (CH/00/4077), also constitute an interference with the applicants' right to peaceful enjoyment of their possessions, to be considered under the rule contained in the first sentence of Article 1 of Protocol No. 1 to the Convention (see, e.g., European Court of Human Rights, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, A44).

144. In respect of the Republika Srpska, the Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the interference with the rights of all of the

applicants to respect for their homes cannot be justified under the second paragraph of that Article. The Chamber finds on the same grounds that the interference with their right to peaceful enjoyment of their possessions cannot be justified either.

145. Accordingly, the Chamber concludes that the Republika Srpska has violated the rights of the applicants to peaceful enjoyment of their possessions, for as long as it was competent to handle these matters, namely until 19 September 2000.

146. In respect of Bosnia and Herzegovina, the Chamber has found that, after 19 September 2000, the failure of the authorities to act in accordance with the laws in force at the time of the alleged violations in the cases of Bisera Spahalić (CH/00/4116) and Avdo Toskić (CH/00/4077) constitutes an interference which cannot be justified. The Chamber finds no intereference in the cases of Mustafa Spahalić (CH/00/4117) and Adil Ušanović (CH/00/4115) that can be attributed to Bosnia and Herzegovina.

147. Accordingly, in respect of the Republika Srpska the Chamber finds a violation of Article 1 of Protocol No. 1 to the Convention as to all of the applicants up until 19 September 2000. In respect of Bosnia and Herzegovina, the Chamber finds that with respect to the cases of Bisera Spahalić (CH/00/4116) and Avdo Toskić (CH/00/4077) there has been a violation of the applicants' right to peaceful enjoyment of their possession, as guaranteed by Article 1 of Protocol No. 1 to the Convention, in relation to the period after 19 September 2000.

3. Article 6 of the Convention

148. Article 6 of the Convention, so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations. . . everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. . . "

149. The Chamber recalls that the right to enjoyment of one's property is a civil right within the meaning of Article 6 of the Convention (see among other authorities, case no. CH/98/659 et al., *Pletilić and others* v. *Republika Srpska*, decision on admissibility and merits delivered on 10 September 1999, paragraph 191, Decisions August-December 1999 citing *Langborger v. Sweden* Judgment of 22 June 1989, Series A. no. 71, page 12, paragraph 23).

150. The Chamber has already noted that all of the applicants have initiated proceedings before the competent authorities of the Republika Srpska between March and May of 1999. Apart from the case of Adil Ušanović (CH/00/4115) the Republika Srpska has not rendered a decision in any of these cases.

151. The agent of the Republika Srpska argued at the public hearing that the cases have not been solved because the courts of the Republika Srpska lacked competence to hear these cases once the Arbitral Award was signed on 5 March 1999. However, as the Chamber has already found (see paragraph 116-117 above) this argument must be rejected. The wording of the Arbitral Award makes it abundantly clear that, until such time as established by the Supervisor, the Entity laws as well as existing governmental arrangements continued to apply (see paragraph 17 above). If it was the understanding of the Republika Srpska authorities that they lacked competence in these matters then one would have expected that they would have issued decisions declaring themselves incompetent to decide on these matters. They did not. They simply left the cases pending.

152. Further, Article 72 of the Statute of the District of Brčko deals with pending administrative and court procedures as of the date of adoption of the Statute (see paragraph 66 above). In this regard, Article 72(2) specifically states that all administrative proceedings pending when the Statute enters into force will be directly referred to the District Government. In contrast, there is no referral provision in Article 72(1) which deals with pending court proceedings. Rather, it appears to establish that proceedings pending before the Entity courts shall be completed by the Entity courts in accordance with Entity laws. This interpretation of the Arbitral Award and the Statute of Brčko was confirmed by the *amicus curiae* during the public hearing. Mr. Chatzis explained that up until the establishment of

the Brčko judiciary on 1 April 2001 the Entity judiciaries continued to hear cases in the area of the District (see paragraph 43). Further, it was his opinion that any cases pending before the Supreme Court of the Republika Srpska as of 1 April 2001 appealing against the silence of administration shall be concluded by the Republika Srpska authorities.

153. In these cases, the practical effect of the Republika Srpska's stated position is that from 5 March 1999 until the establishment of the Brčko District Judiciary in April 2001, it was impossible for the applicants to have the merits of their civil actions determined by a tribunal within the meaning of Article 6 paragraph 1. Even if it is found that the courts of the Republika Srpska were hearing cases coming from the Brčko District after 5 March 1999, the ambiguity surrounding the competencies of the Republika Srpska courts has deprived these applicants of a coherent system that would effectively protect their rights. Accordingly, there has been a violation of all the applicants' rights of effective access to court as guaranteed by Article 6 paragraph 1. This violation is ongoing.

154. Having concluded that the Republika Srpska courts are still responsible for the proceedings that are ongoing before them, the Chamber finds that Bosnia and Herzegovina cannot be held responsible for any violation in respect of Article 6 of the Convention.

155. In the circumstances of the present cases, the Chamber finds that there has been a violation of the applicants' rights to access to court in respect to the Republika Srpska.

4. Article 13 of the Convention

156. The applicants essentially argued that they did not have an effective remedy before a domestic court. These cases were transmitted to the respondent Parties under Article 13, which provides:

> "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

157. In view of its decision concerning Article 6, the Chamber considers that it does not have to examine the cases under Article 13. The requirements of that Article are less strict than those of Article 6 and are in this instance absorbed by them (see e.g., *Philis v. Greece* judgment of 27 August 1991, Series A no. 209, p.23 par. 67).

VIII. REMEDIES

158. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Parties to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of an applicant.

159. The applicants Bisera Spahalić (CH/00/4116) and Avdo Toskić (CH/00/4077) requested reinstatement into their homes. Bisera Spahalić (CH/00/4116) on behalf of herself and Mustafa Spahalić (CH/00/4117) requested compensation for pecuniary damage in the amount of 12.000 KM. It is unclear from the request whether it was a request for 12.000 KM for each applicant, or together. Adil Ušanović (CH/00/4115) and Avdo Toskić (CH/00/4077) requested compensation for pecuniary damages in an unspecified amount.

160. Republika Srpska argues that any damage that the applicants complain of was not caused by the competent organs of the Government of the Republika Srpska, or organs under its competence. Additionally, the requests are not specified or documented. Bosnia and Herzegovina claims that any compensation that would be awarded by the Chamber should be paid by the Republika Srpska as it was due to the conduct of its bodies that the applicants have suffered human rights violations.

161. The Chamber considers that it cannot reject the claims for compensation submitted by the applicants on the grounds suggested by the respondent Parties, as it has not accepted analagous

arguments relating to the admissibility of the applications (see paragraphs 107-119). As the arguments are inextricably linked, the fact that the Chamber has not accepted them in relation to admissibility of the applications precludes the Chamber from accepting them in relation to the claims for compensation.

162. The Chamber considers it appropriate to order the respondent Party, Bosnia and Herzegovina, to take all necessary steps to enable the applicants, who have not already done so, to regain possession of their properties without further delay and at the latest within one month from the delivery of the present decision, *i.e.* by 7 October 2001.

163. The Chamber considers it appropriate to award compensation for the loss of the use of the applicants' properties in the sum of 200 KM per month to be paid at the latest within one month from the delivery of the present decision, *i.e.* by 7 October 2001. The Chamber further decides that this sum shall be payable from the expiry of the date that the competent municipal organ should have issued a procedural decision upon the applicant's first request to regain possession of their property, *i.e.* 30 (thirty) days after the request was made, up to the actual date of reinstatement (see, e.g., CH/00/6143 et al. *Turundžić and Frančić v. the Federation*, decision on admissibility and merits delivered on 8 February 2001, paragraph 70 and CH/98/834 *O.K.K. v. Republika Srpska*, decision on admissibility and merits delivered on 9 March 2001, paragraph 82).

164. Additionally, in the circumstances of the present cases, the Chamber considers it appropriate to award the applicants monetary compensation for moral damages against the Republika Srpska to be paid at the latest within one month from the delivery of the present decision, *i.e.* by 7 October 2001**.** This is due to the suffering the applicants have undoubtedly undergone as a result of their inability to return to their property. The Chamber considers that, in the particular circumstances of these cases, and also bearing in mind the previous jurisprudence of the Chamber on the issue of monetary compensation for moral damages in cases involving the return of persons to their pre-war homes (see, e.g., CH/99/1961 *Zornić v. Bosnia and Herzegovina, Republika Srpska and the Federation,* decision on admissibility and merits delivered on 8 February 2001, paragraph 129), that an appropriate amount of compensation for moral damages to award is between 1,000 and 1,200 KM per applicant, depending on the specific facts of each application.

165. Ms. Bisera Spahalić, (CH/00/4116) filed a request for repossession of her property on 5 April 1999. Accordingly, the Chamber considers it appropriate to order the Republika Srpska to pay the applicant 200 KM per month from May 1999 through September 2000, the time in which the responsibility for housing matters was transferred to the District of Brčko. This amounts to a total of 3,400 KM to be paid to the applicant by the authorities of Republika Srpska. Thereafter, the Chamber orders Bosnia and Herzegovina to pay the applicant 200 KM per month from October 2000 through September 2001 in an amount totalling, 2,400 KM. Bosnia and Herzegovina is further ordered to pay the applicant 200 KM per month until the end of the month in which the applicant is reinstated.

166. Concerning moral damages, the Chamber finds it appropriate to order the Republika Srpska to pay Ms. Bisera Spahalić 1,200 KM by way of moral damages for the suffering she has undergone as a result of not being able to repossess her home.

167. With respect to Mr. Mustafa Spahalić (CH/00/4117), the Chamber notes that he filed a request for repossession of his property on 19 May 1999. The applicant never received any response from the Republika Srpska authorities. The applicant was reinstated into possession of his home by a decision of the District of Brčko authorities on 15 November 2000. Accordingly, the Chamber finds it appropriate to order the Republika Srpska to pay the applicant 200 KM per month for the loss of use of his home from June 1999 through September 2000, totalling 3,200 KM. Additionally, the Chamber finds it appropriate to order the Republika Srpska to pay Mr. Mustafa Spahalić 1,000 KM by way of moral damages for the suffering he has undergone as a result of not being able to repossess his home in accordance with the law.

168. With respect to Mr. Avdo Toskić (CH/00/4077), the Chamber notes that he filed a request for repossession of his apartment on 24 May 1999. The applicant never received any response from the Republika Srpska authorities. The applicant still has not repossessed his apartment. In this case,

the Chamber considers it appropriate to order the Republika Srpska to pay the applicant 200 KM per month from June 1999 through September 2000, the time in which the responsibility for housing matters was transferred to the District of Brčko. This amounts to a total of 3,200 KM to be paid to the applicant by the authorities of Republika Srpska. Thereafter, the Chamber orders Bosnia and Herzegovina to pay the applicant 200 KM per month from October 2000 through September 2001 in an amount totalling, 2,400 KM. Bosnia and Herzegovina is further ordered to pay the applicant 200 KM per month until such time as the applicant regains possession of his apartment.

169. Concerning moral damages, the Chamber finds it appropriate to order the Republika Srpska to pay Mr. Avdo Toskić 1,200 KM by way of moral damages for the suffering he has undergone as a result of not being able to repossess his home.

170. With respect to Mr. Adil Ušanović (CH/00/4115), the Chamber notes that he filed a request for repossession of his apartment on 4 March 1999. He regained possession of his apartment on 9 September 2000 by a decision of the Ministry for Refugees and Displaced Persons of the Republika Srpska. In this case, the Chamber considers it appropriate to order the Republika Srpska to pay the applicant, for the loss of use of his apartment, 200 KM per month from April 1999 through September 2000, an amount totalling 3,600 KM.

171. Concerning moral damages, the Chamber finds it appropriate to order the Republika Srpska to pay Mr. Adil Ušanović 1,000 KM by way of moral damages for the suffering he has undergone as a result of not being able to repossess his apartment in accordance with the law.

172. The Chamber further awards simple interest at an annual rate of 10% (ten) percent as of the date of the expiry of the one month periods set in paragraphs 163-164 for the implementation of the present decision, on the sums awarded in paragraphs 165-171 or any unpaid portion thereof until the date of settlement in full (see e.g., case no. CH/00/6142, *Dušan & Mila Petrović v. the Federation*, decision on admissibility and merits delivered on 9 March 2001, paragraph 72).

IX. CONCLUSIONS

173. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications admissible against the Republika Srpska insofar as they concern alleged violations of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention before 19 September 2000;

2. unanimously, to declare the applications admissible against Bosnia and Herzegovina insofar as they concern alleged violations of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention after 19 September 2000;

3. unanimously, to declare the applications admissible against the Republika Srpska insofar as they concern alleged violations of Article 6 and Article 13 of the Convention;

4. by 12 votes to 1, to declare the applications admissible against Bosnia and Herzegovina insofar as they concern alleged violations of Article 6 and Article 13 of the Convention after 1 April 2001;

5. unanimously, to declare the remainder of the applications inadmissible;

6. unanimously, that there has been a violation of the right of the applicants to respect for their homes within the meaning of Article 8 of the Convention, the Republika Sprska thereby being in breach of Article I of the Agreement;

7. unanimously, that there has been a violation of the right of the applicants to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

8. unanimously, that there has been a violation of the rights of the applicants Bisera Spahalić (CH/00/4116) and Avdo Toskić (CH/00/4077) to respect for their homes within the meaning of Article 8 of the Convention, Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

9. unanimously, that there has been no violation of the rights of the applicants Mustafa Spahalić (CH/00/4117) and Adil Ušanović (CH/00/4115) to respect for their homes within the meaning of Article 8 of the Convention by Bosnia and Herzegovina;

10. unanimously, that there has been a violation of the right of the applicants Bisera Spahalić (CH/00/4116) and Avdo Toskić (CH/00/4077) to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

11. unanimously, that there has been no violation of the rights of the applicants Mustafa Spahalić (CH/00/4117) and Adil Ušanović (CH/00/4115) to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention by Bosnia and Herzegovina;

12. by 10 votes to 3, that the impossibility for the applicants to have the merits of their civil actions determined by a tribunal constitutes a violation of their right to effective access to court within the meaning of Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

13. by 10 votes to 3, that no violation is found in respect to Bosnia and Herzegovina concerning the applicants' rights of effective access to court within the meaning of Article 6 of the Convention;

14. unanimously, that it is not necessary to examine the application under Article 13 of the Convention;

15. unanimously, to order Bosnia and Herzegovina to enable the applicants Bisera Spahalić and Avdo Toskić to regain possession of their properties without further delay and at any rate not later than 7 October 2001;

16. unanimously, to order the Republika Srpska to pay Bisera Spahalić, the applicant in case no. CH/00/4116, no later than 7 October 2001, KM 4,600 (four thousand six hundred Convertible Marks), composed of KM 1,200 by way of compensation for moral damages and KM 3,400 for loss of use of her home through September 2001;

17. unanimously, to order the Republika Srpska to pay Mustafa Spahalić, the applicant in case no. CH/00/4117, no later than 7 October 2001, KM 4,200 (four thousand two hundred Convertible Marks), composed of KM 1,000 by way of compensation for moral damages and KM 3,200 for loss of use of his home;

18. unanimously, to order the Republika Srpska to pay Avdo Toskić, the applicant in case no. CH/00/4077, no later than 7 October 2001, KM 4,400 (four thousand four hundred Convertible

Marks), composed of KM 1,200 by way of compensation for moral damages and KM 3,200 for loss of use of his home through September 2001;

19. unanimously, to order the Republika Srpska to pay Adil Ušanović, the applicant in case no. CH/00/4115, no later than 7 October 2001, KM 4,600 (four thousand six hundred Convertible Marks), composed of KM 1,000 by way of compensation for moral damages and KM 3,600 for loss of use of his home;

20. by 12 votes to 1 to order Bosnia and Herzegovina to pay Bisera Spahalić, the applicant in case no. CH/00/4116, no later than 7 October 2001, KM 2,400 (two thousand four hundred Convertible Marks) for loss of use of her home from October 2000 through September 2001 and an additional KM 200 per month until the end of the month in which she regains possession of her home, each of these additional payments to be made within 30 (thirty) days from the end of the month to which they relate;

21. by 12 votes to 1, to order Bosnia and Herzegovina to pay Avdo Toskić, the applicant in case no. CH/00/4077, KM 2,400 (two thousand four hundred Convertible Marks) for loss of use of his home from October 2000 through September 2001 and an additional KM 200 per month until the end of the month in which he regains possession of his home, each of these additional payments to be made within 30 (thirty) days from the end of the month to which they relate;

22. unanimously, to order the respondent Parties to pay simple interest at the rate of 10 (ten) percent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above one-month periods until the date of settlement; and

23. unanimously, to order the Republika Srpska and Bosnia and Herzegovina to report to it not later that 7 October 2001 on the steps taken by them to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber